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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,469	04/15/2005	Hongyu Yue	267154US26PCT	7010
22850 7590 07/29/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER OLSEN, ALLAN W				
ART UNIT 1716		PAPER NUMBER		
NOTIFICATION DATE 07/29/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/531,469

Applicant(s)

YUE ET AL.

Examiner

Allan Olsen

Art Unit

1716

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, method claims 20 – 41, in the reply filed on February 23, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-19, 42 and 43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Allowable Subject Matter

The indicated allowability of claims 26, 27, 33 and 34 is withdrawn for the reasons set forth below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-24, 29, 38, 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,824,813 issued to Lill et al. (hereinafter, Lill).

Lill teaches a method of determining the etching rate of a layer on a substrate being etched in a plasma processing system. Lill teaches providing a layer which will inherently have a thickness. The layer thickness will inherently have a minimum thickness, a maximum thickness, a mean thickness, and a thickness range. Lill teaches etching said layer on said substrate. Lill teaches measuring at least one endpoint signal using a diagnostic system coupled to said plasma processing system, wherein said at least one endpoint signal comprises an endpoint transition (see, for examples, figures 6a, 6c, 8a-8d); and determining said etch rate from a ratio of said thickness to a difference between a time during said endpoint transition and a starting time of said etching (column 13, lines 20-34). Lill teaches using optical spectroscopy as a diagnostic. Lill teaches the endpoint signal comprises two endpoint signals (see, for example, figures 8a-8d). Lill teaches determining a duration for said endpoint transition (fig. 8a) .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25-28, 32-35, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lill with evidentiary support provided by Long et al. in US 2004/0018127.

The above noted teaching of Lill is herein relied upon.

Lill does not teach the endpoint transition comprises an inflection point. Petrucci does not teach that the inflection point corresponds to the mean thickness of the layer being etched.

One skilled in the art would expect the endpoint transition of Petrucci to have an inflection point because the trace of an optical emission or absorption spectrum typically has inflection points. See, for example, figure 9 of Long et al.

It would have been obvious to one skilled in the art that the mid-point along the duration of the endpoint transition would correspond to a mid-point along the measure of layer thickness because the thickness of the layer being etched is directly related to the length of time the layer is etched.

Regarding claims 26, 27, 33 and 34, the examiner notes that the determination of etching rate is fundamentally the thickness etched divided by the duration of the etching. It is noted that all experimental determinations of any parameter, including time

and thickness have some degree of uncertainty associated with them. As such, when determining the etching rate by dividing the thickness divided by duration of etching wherein each value has an associated +/- degree of uncertainty, it is prudent to establish a range of etching rates that reflects all the possible values based upon the given uncertainty in measurements. Therefore, the minimum thickness should not only be correlated with the minimum time but also the maximum time. Likewise, the maximum thickness should be correlated with the minimum time as well as the maximum time.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Olsen whose telephone number is 571-272-1441. The examiner can normally be reached on M, W and F: 1-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571-272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Allan Olsen/
Primary Examiner, Art Unit 1792